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# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

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### EXTRAORDINARY

### No. 2

#### GOVERNMENT OF GOA

##### Department of Elections

Office of the Chief Electoral Officer

##### Notification

No. 8-7-2013/ELEC/394

The following order dated 5th March, 2013 of the Hon'ble Governor of Goa and the Opinion dated 26th February, 2013 from the Election Commission of India, New Delhi are hereby published for general information.

*Narayan S. Navti*, Joint Chief Electoral Officer.

Panaji, 06th March, 2013.

#### Before the Governor of the State of Goa

##### Order

By this order, I dispose of two petitions filed before me i.e. (i) petition dated 3rd January, 2013, by Shri Sudip N. Tamankar, resident of Rambhuvan wada, Ribandar, Panaji, Goa; and (ii) petition dated 4th January, 2013, by Shri Melwyn Fernandes, resident of Goncoi, Aldona, Bardez, Goa, both seeking disqualification of Shri Glen Ticklo, Member of the Legislative Assembly of Aldona Constituency, Goa, under Article 191(1)(d) of the Constitution of India.

2. On receipt of the above petitions, I had sought the opinion of the Election Commission of India

in the matter, as required under Article 192(2) of the Constitution of India. I have since received the opinion of the Election Commission of India vide communication No. 113/1(G)/Goa/2013-RCC/1052 dated 27th February, 2013. According to the opinion given by the Election Commission of India, the above stated petitions raised the question of alleged disqualification of Shri Glen Ticklo, elected to the Goa Legislative Assembly from 10 —Aldona Assembly Constituency at the general election held in 2012, for being a member of the Assembly under sub-clause (d) of clause (1) of Article 191 of the Constitution of India. The contention in the petitions was that Shri Glen Ticklo is a Portuguese citizen who voluntarily acquired Portuguese Citizenship/Nationality by getting his birth entered in the Central Registry of Births, Lisbon on 27-11-2009. The petitioners had submitted that as per the law prevailing in Portugal, registration of birth in the Central Registry of Birth in that country amounts to acquiring Citizenship of Portugal. On this ground, the petitioners had alleged that Shri Glen Ticklo had incurred disqualification under Article 191 (1)(d) of the Constitution when he contested election to the Legislative Assembly in 2012. They had also alleged that Shri Ticklo was not qualified under Article 173 of the Constitution at the time of filing nomination for the said election.

3. According to the opinion of the Election Commission of India, it is well settled that under

Article 192(1) of the Constitution of India, the jurisdiction of the Governor to decide a question of disqualification of a sitting member of the Legislative Assembly arises only in disqualifications incurred *after* election as a member of the Assembly. The jurisdiction of the Election Commission to inquire into such question of the alleged disqualification, on being referred to it by the Governor under Article 192(2) of the Constitution, also arises only in case of *post-election* disqualification. Any question of *pre-election* disqualification, i.e. disqualification from which a person was suffering at the time of, or prior to his election, can be raised by means of an election petition presented in accordance with the provision of Art. 329(b) of the Constitution read with Part-VI of the Representation of the People Act, 1951, and not under Article 192(1). In this connection, reference is invited to the Supreme Court's catena of decisions in *Election Commission Vs. Saka Venkata Rao* (AIR 1953 SC 201); *Brundaban Naik Vs. Election Commission* (AIR 1965 SC 1892); *Election Commission Vs. N. G. Ranga* (AIR 1978 SC 1609), etc. In a very large number of other similar cases in the past, the Commission has given a similar opinion, on references made to it by the President and Governors of States.

4. In the present case, according to the opinion of the Election Commission of India, the allegation as mentioned in the above stated petitions is that Shri Glen Ticklo was not an Indian citizen but a Portuguese Citizen, at the time he filed nomination for election to the Goa Legislative Assembly in January 2012. Thus, this would be a case of alleged disqualification as well as lack of qualification at the time of contesting the election. In view of the well-settled constitutional position, referred to above, the question of the alleged disqualification of Shri Glen Ticklo, being a case of *pre-election* disqualification, if at all any disqualification was attracted, cannot be raised before the Governor under Article 192(1) of the Constitution. The Election Commission also has no jurisdiction to express any opinion under Article 192(2) on the question of such alleged pre-election disqualification. According to the opinion of the Election Commission, the present petition is, therefore, not maintainable before the Governor in terms of Article 192(1) of the Constitution.

The decision of Supreme Court cited by the petitioner in *K. Venkatachalam Vs A Swamickan* (AIR 1999 SC 1723) does not give jurisdiction to the Governor to adjudicate on a petition under Article 192(1) raising question of alleged pre-election disqualification, or any jurisdiction to the Election Commission to enquire into such cases on being referred to it for opinion under Article 192(2). That was a case decided by the Madras High Court and Supreme Court on a writ petition filed under Article 226 and 136 read with Articles 191 and 193 of the Constitution, and not Article 192.

5. In the light of the above, the Election Commission has returned the matter to me with the opinion, under Article 192(2) of the Constitution, to the above effect that it is not maintainable under Article 192(1) of the Constitution. Article 192(2) mandates that, before giving any decision on any such question of disqualification, the Governor shall act according to the opinion of the Election Commission. Accordingly, acting on the opinion tendered by the Election Commission of India, I hereby order that the above-mentioned two petitions seeking disqualification of Shri Glen Ticklo, Member of the Legislative Assembly, Goa, are not maintainable. The petitions are hereby disposed off accordingly.

Raj Bhavan,  
Dona Paula,  
Goa 403 004,

Dated the 5th March, 2013.

Bharat Vir Wanchoo,  
Governor of Goa.

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**Election Commission of India**

Nirvachan Sadan,  
Ashoka Road,  
New Delhi-110 001.

*Reference Case No. 1(G) of 2013*

[Reference from the Governor of Goa under Article 192(2) of the Constitution of India]

In re: Alleged disqualification of Shri Glen Ticklo for being a member of Legislative Assembly of Goa, under Article 191(1)(d) of the Constitution of India.

**OPINION**

This is a reference dated 7th January, 2013, from the Governor of Goa, seeking the opinion of the Election Commission under Article 192(2) of the Constitution of India, on the question of alleged disqualification of Shri Glen Ticklo, a sitting member of Goa Legislative Assembly, under Article 191(1)(d) of the Constitution of India.

2. The above question arose on the two petitions dated 03-01-2013, submitted by Shri Sudip N. Tamankar, resident of Rambhuan wada, Ribhandar, Panaji, Goa, and petition dated 04-01-2013 from Shri Melwyn Fernandes, resident of Goncol, Aldona, Bardez, Goa, to the Governor of Goa, under Article 192(1) of the Constitution, raising the question of alleged disqualification of Shri Glen Ticklo, elected to the Goa Legislative Assembly from 10—Aldona Assembly Constituency at the general election held in 2012, for being a member of the Assembly under sub-clause (d) of clause (1) of Article 191 of the Constitution of India. The contention in the petitions is that Shri Glen Ticklo is a Portuguese citizen who voluntarily acquired the Portuguese Citizenship/Nationality by getting his birth entered in the Central Registry of Births, Lisbon on 27-11-2009. The petitioners have submitted that as per the law prevailing in Portugal, registration of birth in the Central Registry of Birth in that country amounts to acquiring Citizenship of Portugal. On this ground the petitioners have alleged that Shri Glen had incurred disqualification under Article 191(1)(d) of the Constitution when he contested election the Legislative Assembly in 2012. They have also alleged that Shri Ticklo was not qualified under Article 173 of the Constitution at the time of filing nomination for the said election.

3. It is well settled that under Article 192(1) of the Constitution of India, the jurisdiction of the Governor to decide question of disqualification of a sitting member of Legislative Assembly arises only in disqualifications incurred *after* election as a member of the Assembly. The jurisdiction of the Election Commission to inquire into such question of the alleged disqualification, on being referred to it by the Governor under Article 192(2) of the Constitution, also arises only in case of

*post-election* disqualification. Any question of *pre-election* disqualification, i.e. disqualification from which a person was suffering at the time of, or prior to his election, can be raised by means of an election petition presented in accordance with the provision of Art. 329(b) of the Constitution read with Part-VI of the Representation of the People Act, 1951, and not under Article 192(1). Reference is invited, in this connection, to the Supreme Court's catena of decisions in *Election Commission Vs. Saka Venkata Rao* (AIR 1953 SC 201); *Brundaban Naik Vs. Election Commission* (AIR 1965 SC 1892); *Election Commission Vs. N. G. Ranga* (AIR 1978 SC 1609); etc. In a very large number of other similar cases in the past, the Commission has given similar opinion, on the references made to it by the President and Governors of States.

4. In the present case, the allegation as mentioned above is that Shri Glen Ticklo was not an Indian Citizen but a Portuguese Citizen, at the time he filed nomination for election to the Goa Legislative Assembly in January, 2012. Thus, this would be a case of alleged disqualification as well as lack of qualification at the time of contesting election. In view of the well settled constitutional position, referred to above, the question of the alleged disqualification of Shri Glen Ticklo, being a case of *pre-election* disqualification, if at all any disqualification was attracted, cannot be raised before the Governor under Article 192(1) of the Constitution. The Election Commission has also no jurisdiction to express any opinion under Article 192(2) on the question of such alleged pre-election disqualification. The present petition is, therefore, not maintainable before the Governor in terms of Article 192 (1) of the Constitution. The decision of Supreme Court cited by the petitioner in *K. Venkatachalam Vs A Swamickan* (AIR 1999 SC 1723) does not give jurisdiction to the Governor to adjudicate on a petition under Article 192 (1) raising question of alleged pre-election disqualification, or any jurisdiction to the Election Commission to enquire into such cases on being referred to it for opinion under Article 192 (2). That was a case decided by the Madras High Court and Supreme Court on a writ petition filed under

Article 226 and 136 read with Articles 191 and 193 of the Constitution and not Article 192.

the above effect that it is not maintainable under Article 192(1) of the Constitution.

5. The reference received from the Governor of Goa, in the present case, is accordingly, returned with the opinion of the Election Commission of India, under Article 192(2) of the Constitution, to

<i>Dr. Nasim Zaidi,</i>	<i>V. S. Sampath,</i>	<i>H. S. Brahma,</i>
Election	Chief Election	Election
Commissioner	Commissioner	Commissioner

New Delhi, 26th February, 2013.

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